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**COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PLANNING AND BUILDING
STAFF REPORT**

SUBDIVISION REVIEW BOARD

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| MEETING DATE August 3, 2015 | CONTACT/PHONE Jo Manson (805) 781-4660 jmanson@co.slo.ca.us | APPLICANT Kenneth R. Nelson and Maria T. Nelson | FILE NO. C15-0030 SUB2014-00050 |
| SUBJECT Hearing to consider a request by KENNETH R. NELSON AND MARIA T. NELSON for one (1) Conditional Certificate of Compliance (C15-0030) to legalize one (1) parcel of approximately 6 acres. The proposed project is within the Agriculture land use category and is located at 575 Upper Los Berros Road, approximately 2.4 miles east/northeast of the intersection of Upper Los Berros Road and North Dana Foothill Road, east of the City of Arroyo Grande. The site is in the South County Inland Sub Area in the South County planning area. | | | |
| RECOMMENDED ACTION Approve Conditional Certificate of Compliance C15-0030 authorizing the issuance of one (1) conditional certificate of compliance based on the findings listed in Exhibit A and the conditions listed in Exhibit B. | | | |
| ENVIRONMENTAL DETERMINATION This project is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that this project may have a significant effect on the environment; therefore, the activity is exempt from and not subject to CEQA. [Reference: State CEQA Guidelines sec. 15061(b)(3), General Rule Exemption]. | | | |
| LAND USE CATEGORY Agriculture | COMBINING DESIGNATION None | ASSESSOR PARCEL NUMBER 047-071-028 Portion | SUPERVISOR DISTRICT(S): 4 |
| PLANNING AREA STANDARDS: None applicable | | | |
| LAND USE ORDINANCE STANDARDS: Section 22.22.040 Minimum Parcel Size for Agriculture, Title 22, Section 22.04.040 Requirements for Sites Divided by a Land Use Category Boundary | | | |
| EXISTING USES: Single family home, well, barn, residential accessory structures, grazing | | | |
| SURROUNDING LAND USE CATEGORIES AND USES: North: Rural Lands / undeveloped, grazing East: Rural Lands / single family residences, agriculture South: Agriculture / multiple cell sites, agriculture West: Agriculture / undeveloped, grazing | | | |
| OTHER AGENCY / ADVISORY GROUP INVOLVEMENT: The project was referred to: Public Works, Environmental Health, Agricultural Commissioner and South County Advisory Council | | | |
| TOPOGRAPHY: Level to steeply sloping. | | VEGETATION: California annual grassland, shrubs, oaks | |
| PROPOSED SERVICES: Water supply: On site well. Sewage Disposal: Individual septic system Fire Protection: CalFire | | ACCEPTANCE DATE: June 25, 2015 | |
| ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT: COUNTY GOVERNMENT CENTER γ SAN LUIS OBISPO γ CALIFORNIA 93408 γ (805) 781-5600 γ FAX: (805) 781-1242 | | | |

PROJECT HISTORY:

Under the Subdivision Map Act (Section 66499.35) and the County's Real Property Division Ordinance (Section 21.02.020), any person owning real property or vendee may request the County to make a determination whether the real property complies with the Subdivision Map Act and the County's Real Property Division Ordinance. If the County determines the real property is a legally created parcel, it is required to issue and record an (unconditional) certificate of compliance. If the County determines the real property is not a legally created parcel in compliance with the Subdivision Map Act and the County's Real Property Division Ordinance, it is then required to issue and record a *conditional* certificate of compliance. The County may, as a condition to granting a conditional certificate of compliance, impose any conditions that would have been applicable to the division of the property at the time the applicant acquired his or her interest therein.

The applicant is requesting one (1) conditional certificate of compliance for an approximate six (6) acre parcel that is a portion of the North half of the Southwest quarter of Section 30, Township 32 South, Range 14 East. Based upon a parcel size of approximately six acres, a pre-1966 deed would establish the legality of that parcel if the parcel had been conveyed by deed separately from surrounding land prior to February 17, 1966. There is no pre-1966 deed for this specific parcel which deeded it separately from surrounding land. This six acre parcel is the result of a 2004 court order.

Based on a review of the deed/patent history, the entire Southwest quarter of Section 30, Township 32 South, Range 14 East was originally a separate legal parcel per Book D of Patents, Pages 353-354.

On November 5, 2004 a lot line adjustment, COAL 04-0192, was submitted for processing by the applicant, Mr. Nelson, and the adjacent property owner(s). The adjustment would have adjusted the property line between the Southwest quarter of Section 30 and the South half of the Northwest quarter of Section 30. The adjusted property line would have resulted in the south half of the northwest quarter of Section 30 (eighty acres) and the six acre subject property becoming one legal parcel.

The application for COAL 04-0192 included an explanation of the purpose of the lot line adjustment. The project agent noted that the results of a boundary survey completed in 1998 disclosed that the main residence thought to be built on the approximate eighty acre property (APN: 047-071-028 portion) was in fact built on the approximate six acre property (APN: 047-071-028 portion) which, at that time, was owned by a different property owner that owned the entire Southwest quarter of Section 30. On December 6, 2004 the project planner sent a letter to the agent requesting additional information before the project could be accepted as complete for processing. The applicant was informed that the six acre property could not be removed from the land conservation (Williamson Act) contract without violating the contract and therefore a revised map would be required to show an equal exchange of land thereby maintaining the same amount of land under contract. The requested information was not received and the applicants did not pursue the processing of this lot line adjustment. On April 24, 2006 the lot line adjustment project was deemed withdrawn.

A Default Judgment by Court action was completed by the applicant, Kenneth Nelson, in 2004 per Stipulated Judgment (Document No. 2006-023296) and Default Judgment by Court (Document No. 2006-023297). The eighty acre property consisting of the South half of the Northwest quarter of Section 30 was already owned by Mr. Nelson in 2004. The court action resulted in the approximate six acre property (APN: 047-071-028 portion) also being owned by Mr. Nelson. The Court action resulted in the same property ownership configuration that Lot Line Adjustment COAL 04-0192 would have achieved with Mr. Nelson owning both the eighty acre and the six acre properties.

County Counsel review has concluded the following: Since Courts cannot adjust boundary lines of property between property owners, but only settle disputes, it is then up to the property owners to apply to the County for a lot line adjustment to carry out any decision of the Court. Lot Line Adjustment COAL 04-0192 was never completed. The court action stipulated that the six acre property was then owned by the applicant, Kenneth Nelson.

This was a violation of the County's Lot Division Ordinance and State Subdivision Map Act because parcels more than three acres but less than forty acres could not be created after February 17, 1966 (Lot Division Ordinance) without first having a subdivision (i.e., lot line adjustment) approved by the County. A map (or lot line adjustment) was required to create parcels at that time. Therefore, a conditional certificate of compliance is required.

In addition, the six acre property is part of a Land Conservation Contract per Volume 1724 of Official Records, Pages 782-800 recorded May 17, 1973 – San Luis Obispo County Board of Supervisors Resolution No. 73-245. The Land Conservation Contract consists of properties to the south as well as the six acre property. The conveyance of land below the minimum parcel size in the contract is a violation of the contract. Staff concluded that due to the Court action the most practical remedy for the violation is an owner initiated non-renewal for the six acre property now owned by Mr. Nelson. The applicant has applied for a notice of non-renewal under AGP2014-00015, and will serve notice on the county to remove this portion of the contracted land from the Williamson Act program prior to finaling the lot line adjustment.

Applicable deed history is provided in Attachment 6.

ORDINANCE COMPLIANCE:

This request is to legalize an approximate six acre parcel that was created by the court action at a time when a lot line adjustment would be required to carry out any decision of the Court. No lot line adjustment was approved. Therefore, the parcel was not legally created. Pursuant to the Subdivision Map Act, the parcel should comply with the subdivision standards in effect on September 21, 2004 as that is the date that the applicant acquired his interest in the property (Document No. 2006-023297).

Minimum Parcel Size

The subject six acre property does not meet any of the methods for subdividing land in the Agriculture land use category under Section 22.22.040 of the Land Use Ordinance and is well below the smallest parcel size allowed in this category which is 20 acres.

Requirements for Sites Divided by a Land Use Category Boundary

Section 22.04.040 specifies requirements for sites divided by a land use category boundary. A condition of approval has been included that requires that a lot line adjustment be applied for whereby the six and eighty acre parcels become one parcel. The proposed lot line adjustment would result in an eighty six acre parcel. The six acre subject parcel has an Agriculture land use category designation. The eighty acre parcel has a Rural Lands land use category designation. The resulting eighty six acre parcel would have two land use categories. Where a site is divided by one or more land use category boundaries, the site shall be developed in compliance with the requirements of each district, as applicable. The subject parcel is already developed in accordance with applicable standards. Any future development of the subject adjusted parcel would adhere to standards in both the Agriculture and Rural Lands land use categories.

Quimby Fees

Title 21, the Real Property Division Ordinance, establishes an in-lieu fee for all new land divisions for the purpose of developing new, or rehabilitating existing, park or recreational facilities to serve the land division. Payment of the parkland fee for all undeveloped parcels is normally required prior to development of the subject property. The six acre parcel is already developed with a single family home, barn, well and residential accessory structures. In addition, a condition of approval requires that the property owner apply for a lot line adjustment to adjust the eighty (80) acre and the six (6) acre parcel into one (1) parcel. Therefore, this project is not subject to payment of this fee because the six acre parcel is already developed and a new parcel will not be created with the lot line adjustment condition of approval.

Inclusionary Housing Fees

Title 29, the Affordable Housing Fund, establishes an in-lieu fee to create a fund that would help to meet, in part, the housing needs of the County's very low, low, moderate income and workforce households. This fee was established in 2008 when Title 22, Land Use Ordinance, was adopted by the Board of Supervisors (Ordinance No. 3169) and Title 29, Affordable Housing Fund Ordinance, was adopted by the Board of Supervisors (Ordinance No. 3171). The standards applicable to this project go back to the time when the applicant acquired interest in the property (September 21, 2004). Therefore, this project is not subject to payment of this fee.

Affordable housing fees were established in 1991 when Title 18, Public Facilities Fees Ordinance, was adopted by the Board of Supervisors (Ordinance No. 2519). The six acre parcel is already developed with a single family home, barn, well and residential accessory structures. A condition of approval requires that the property owner apply for a lot line adjustment to adjust the eighty (80) acre and the six (6) acre parcel into one (1) parcel. Therefore, this project is not subject to payment of this fee because a new parcel will not ultimately be created and it is currently developed.

STAFF COMMENTS:

Authority

Within the Subdivision Map Act, California Government Code Section 66499.35(b) describes the procedure for granting a Conditional Certificate of Compliance:

*“If a local agency determines that the real property does not comply with the provisions of [the Subdivision Map Act] or of local ordinances enacted pursuant to [the Subdivision Map Act], it **shall** issue a conditional certificate of compliance. A local agency **may**, as a condition to granting a conditional certificate of compliance, impose any conditions that would have been applicable to the division of the property at the time the applicant acquired his or her interest therein...”* [emphasis added by staff]

In this case, staff has determined that an unconditional certificate of compliance cannot be granted because the illegal division creating the parcels by deed conveyance occurred at a time when a map would have been required. As such, the county is required to issue conditional certificate of compliance. The above section goes on to describe the County’s authority in conditioning the certificate.

Analysis

The six acre parcel does not meet the 320 acre minimum parcel size requirement per Sections B, C or D of the land use ordinance to create new legal parcels in the Agriculture land use category. The property owner has applied for AGP2014-00015 to consolidate the six acre property with his 80 acre parcel. The land owner has also applied for an owner-initiated Notice of Non-Renewal of the land conservation (Williamson Act) contract for the subject property.

AGENCY REVIEW:

Public Works – No concerns.

Environmental Health – No comment.

Agriculture Commissioner – No additional conditions recommended.

South County Advisory Council – No comment.

LEGAL LOT STATUS:

The one (1) parcel was created by a court action at a time when the property owner would have been required to subsequently apply to the County for approval of a lot line adjustment to carry out any decision of the Court. No lot line adjustment was approved. Therefore, the parcel was not legally created.

ATTACHMENTS

Attachment 1 - Findings

Attachment 2 - Conditions of Approval

Attachment 3 - Project Graphics

Attachment 4 - Project Referral Responses

Attachment 5 - Draft Conditional Certificate of Compliance

Attachment 6 - Deed History

Report prepared by Jo Manson
and reviewed by Terry Wahler, Senior Planner